



# National Labor Relations Board

## Weekly Summary of NLRB Cases

Division of Information

Washington, D.C. 20570

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November 28, 2008

W-3184

CASES SUMMARIZE  
VISIT [WWW.NLRB.GOV](http://WWW.NLRB.GOV) FULL TEXT

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*St. George Warehouse* (22-CA-23223, et al.; 353 NLRB No. 50) Kearney, NJ Nov. 17, 2008. The Board adopted the second supplemental decision of the administrative law judge, ordering the Respondent *St. George Warehouse* to make whole two claimants which the Board previously found the Respondent discriminated against in violation of Section 8(a)(3) and (1) of the Act. In doing so, the Board rejected Respondent's claims that the discriminatees in this case did not mitigate back pay damages by failing to participate in a reasonable and diligent job search. [\[HTML\]](#) [\[PDF\]](#)

Following the initial hearing in this matter, a judge conducted a compliance, or back pay, proceeding to determine the amount of back pay owed to discriminatees Leonard Sides and Jesse Tharp. The General Counsel, relying solely on the Compliance Specification issued in this case on May 22, 2002, did not call any witnesses, or produce any further evidence of the discriminatees' actual efforts to find employment following their unlawful discharge. The judge, relying on then current Board law, determined that the employer bore the entire burden of showing that the discriminatees failed to mitigate their damages, and that the Respondent in this case had not met the requisite burden. The Respondent filed exceptions to the judge's decision.

In the subsequent full-Board decision, the Board reaffirmed the principle that the employer bears the ultimate burden of persuasion concerning whether an unlawfully discharged employee made an adequate search for interim employment. However, the Board determined that, once the employer shows that there were comparable jobs available in the relevant geographic area, the burden of production shifts to the discriminatee and the General Counsel to show that the discriminatee took reasonable steps to seek the available jobs. The case was remanded back to the judge to apply the new burden of proof standard.

On remand, the General Counsel presented additional evidence regarding the job search efforts of Sides and Tharp. Tharp, passed away prior to the remand hearing, and was unavailable to testify. Tharp's mother testified to her son's job search efforts, and her son's decision to move to Florida during the back pay period. The Board affirmed the decision of the judge in the second supplemental decision, holding that given the unique circumstances of Tharp in this case, and the facts presented relating to Sides, the Respondent failed to meet the requisite burden created under the new burden of proof established in *St. George Warehouse*, 351 NLRB No. 42 (2007).

(Chairman Schaumber and Member Liebman participated.)

Adm. Law Judge Steven Davis issued his supplemental decision May 20, 2008.

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## **LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*B & C Cartage, Inc.* (an Individual) Freeland, MI Nov. 14, 2008. 7-CA-50606; JD(ATL)-39-08, Judge Lawrence W. Cullen.

*CNN America, Inc. and Team Video Services, LLC* (NABET, Communications Workers Locals 31 and 11) Atlanta, GA Nov. 19, 2008. 5-CA-31828, 33125; JD-60-08, Judge Arthur J. Amchan.

*Service Employees Local 121RN* (an Individual) Pomona, CA Nov. 19, 2008. 21-CB-14428;  
JD(SF)-48-08, Judge William G. Kocol.

*McElroy Coal Co.* (Mine Workers Local 1638) Glen Easton, WV Nov. 21, 2008. 6-CA-35806;  
JD-61-08, Judge Eric M. Fine.

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**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS  
IN REPRESENTATION CASES**

*(In the following cases, the Board adopted Reports of  
Regional Directors or Hearing Officers in the absence of exceptions)*

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

*West Coast Confections, Inc. d/b/a Charlotte's Confections*, Millbrae, CA, 20-RD-2456,  
Nov. 20, 2008

*Harding and Hill, Inc. d/b/a Harding's Friendly Market*, Plainwell, MI, 7-RC-23206,  
Nov. 20, 2008

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***Miscellaneous Board Decisions and Orders***

**ORDER [denying Employer's request for special  
permission to appeal Regional Director's decision  
regarding which employees would vote by mail  
and which would vote manually]**

*Washington State Migrant Council*, Sunnyside, WA, 19-RC-15151, Nov. 17, 2008

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